

1 **UNITED STATES DISTRICT COURT**  
2 **DISTRICT OF NEVADA**

3 JARED BEEBE,

4 Plaintiff

5 v.

6 NEVADA DEPARTMENT OF  
7 CORRECTIONS, et. al.,

8 Defendants

Case No.: 3:19-cv-00038-MMD-WGC

**Report & Recommendation of  
United States Magistrate Judge**

Re: ECF Nos. 30, 31

9 This Report and Recommendation is made to the Honorable Miranda M. Du, United  
10 States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28  
11 U.S.C. § 636(b)(1)(B) and the Local Rules of Practice, LR 1B 1-4.

12 Before the court are Plaintiffs' Motions for Injunction to Stop Transfer. (ECF Nos. 30,  
13 31.)<sup>1</sup>

14 After a thorough review, it is recommended that the motions be denied.

15 **I. BACKGROUND**

16 Plaintiff is an inmate in the custody of the Nevada Department of Corrections (NDOC),  
17 proceeding pro se with this action pursuant to 42 U.S.C. § 1983. (Compl., ECF No. 10.)

18 Defendants are Wilcoxon and Suwe.

19 The court screened Plaintiff's complaint and allowed him to proceed with a single Eighth  
20 Amendment conditions of confinement claim. (Screening Order, ECF No. 9.) The claim is based  
21 on allegations that Plaintiff advised Defendants that he drank a significant amount of water in  
22 preparation for providing a urination sample, and that he urgently needed to use the restroom and  
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<sup>1</sup> Insofar as the court can tell, these motions are identical.

1 was experiencing physical pain from having to hold his urine. He claims that they refused to  
2 allow him to provide a urine sample or urinate in a urinal. Plaintiff informed Suwe he would  
3 accept a charge of refusal to submit to urinalysis if Suwe would allow him access to a bathroom,  
4 but Suwe told him he should urinate in a crowded hallway. As a result of having to hold his  
5 urine, Plaintiff passed out and has since suffered medical side effects.

6 In these motions, Plaintiff states that in February of 2018 he was transferred from Warm  
7 Springs Correctional Center (WSCC) to Stewart Conservation Camp (SCC), a minimum custody  
8 work and medical camp. He informed his boss while working that he was experiencing pain in  
9 his limbs. He was subsequently transferred to Northern Nevada Correctional Center (NNCC)  
10 through a medical classification pending medical care through a neurologist, whom he has not  
11 yet seen. He states that on September 25, 2020, while at NNCC, he was found guilty of a notice  
12 of charges. He has since completed his disciplinary sanction and was advised he could not return  
13 to general population at NNCC because he now has an enemy on the yard and was subject to  
14 transfer to WSCC. He states that his transfer is the result of a doctor's order classifying him there  
15 pending treatment by a specialist. He wants the court to issue an injunction prohibiting his  
16 transfer while he is under pending medical care. (ECF Nos. 30, 31.)

## 17 **II. DISCUSSION**

18 The purpose of a preliminary injunction or temporary restraining order is to preserve the  
19 status quo if the balance of equities so heavily favors the moving party that justice requires the  
20 court to intervene to secure the positions until the merits of the action are ultimately determined.  
21 *University of Texas v. Camenisch*, 451 U.S. 390, 395 (1981).

22 Injunctions and temporary restraining orders are governed procedurally by Federal Rule of  
23 Civil Procedure 65, but case law outlines the substantive requirements a party must satisfy to obtain

1 an injunction or restraining order. *See Grupo Mexicano de Desarrollo S.A. v. Alliance Bond Fund,*  
 2 *Inc.*, 527 U.S. 308, 319 (1999) ("[T]he general availability of injunctive relief [is] not altered by  
 3 [Rule 65] and depend[s] on traditional principles of equity jurisdiction.").

4 A preliminary injunction is an “extraordinary and drastic remedy” that is “never awarded  
 5 as of right.” *Munaf v. Geren*, 553 U.S. 674, 689-90 (2008) (citations omitted). Instead, in every  
 6 case, the court “must balance the competing claims of injury and must consider the effect on each  
 7 party of the granting or withholding of the requested relief.” *Winter v. Natural Resources Defense*  
 8 *Council, Inc.*, 555 U.S. 7, 23 (2008) (internal quotation marks and citation omitted). The instant  
 9 motion requires that the court determine whether Plaintiff has established the following: (1) he is  
 10 likely to succeed on the merits; (2) he is likely to suffer irreparable harm in the absence of  
 11 preliminary relief; (3) the balance of equities tips in his favor; and (4) an injunction is in the public  
 12 interest. *Id.* at 20 (citations omitted).).

13 The Prison Litigation Reform Act (PLRA) mandates that prisoner litigants must satisfy  
 14 additional requirements when seeking preliminary injunctive relief against prison officials. The  
 15 PLRA provides, in relevant part:

16 Preliminary injunctive relief must be narrowly drawn, extend no  
 17 further than necessary to correct the harm the court finds requires  
 18 preliminary relief, and be the least intrusive means necessary to  
 19 correct that harm. The court shall give substantial weight to any  
 20 adverse impact on public safety or the operation of a criminal  
 21 justice system caused by the preliminary relief and shall respect the  
 22 principles of comity set out in paragraph (1)(B) in tailoring any  
 23 preliminary relief.

18 U.S.C. § 3626(a)(2). Thus, § 3626(a)(2) limits the court’s power to grant preliminary injunctive  
 21 relief to inmates. *See Gilmore v. People of the State of California*, 220 F.3d 987, 998 (9th Cir.  
 22 2000). “Section 3626(a)...operates simultaneously to restrict the equity jurisdiction of federal  
 23 courts and to protect the bargaining power of prison administrators-no longer may courts grant or

1 approve relief that binds prison administrators to do more than the constitutional minimum." *Id.* at  
2 999.

3 A temporary restraining order is appropriate when irreparable injury may occur before  
4 the court can hold a hearing on a motion for preliminary injunction. *See* 11A The Late Charles  
5 Alan Wright & Arthur R. Miller, et. al., *Federal Practice and Procedure*, § 2951 (3d ed. 1999).  
6 The standard for issuing a temporary restraining order is identical to the standard for a  
7 preliminary injunction. *See Stuhlbarg Int'l Sales Co., Inc. v. John D. Brush and Co., Inc.*, 240  
8 F.3d 832, 839 n. 7 (9th Cir. 2001); *see also* 11A The Late Charles Alan Wright & Arthur R.  
9 Miller, et. al., *Federal Practice and Procedure*, § 2951 (3d ed. 1999) ("When the opposing party  
10 actually receives notice of the application for a restraining order, the procedure that is followed  
11 does not differ functionally from that on an application for preliminary injunction and the  
12 proceeding is not subject to any special requirements."). A temporary restraining order "should  
13 be restricted to serving [its] underlying purpose of preserving the status quo and preventing  
14 irreparable harm just so long as is necessary to hold a hearing, and no longer." *Granny Goose*  
15 *Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Local No. 70*, 415 U.S. 423, 439 (1974).

16 In addition, in seeking injunctive relief, "there must be a relationship between the injury  
17 claimed in the motion for injunctive relief and the conduct asserted in the underlying complaint."  
18 *Pacific Radiation Oncology, LLC v. Queen's Medical Center*, 810 F.3d 631, 635 (9th Cir. 2015).  
19 "This requires a sufficient nexus between the claims raised in a motion for injunctive relief and  
20 the claims set forth in the underlying complaint itself." *Id.* "The relationship between the  
21 preliminary injunction and the underlying complaint is sufficiently strong where the preliminary  
22 injunction would grant 'relief of the same character as that which may be granted finally.' *Id.*

1 (quoting *De Beers Consol. Mines v. United States*, 325 U.S. 212, 220 (1945)). "Absent that  
2 relationship or nexus, the district court lacks authority to grant the relief requested." *Id.*

3 Here, Plaintiff does not allege whether he is likely to succeed on the merits of his pending  
4 claim. Nor does he adequately demonstrate a likelihood of irreparable harm in the absence of  
5 injunctive relief. While he asserts generally that he has been referred to a specialist, he does not  
6 articulate how he would suffer irreparable harm if the injunctive relief sought is not granted. For  
7 example, he does not present evidence that he is subject to imminent transfer. Instead, he has  
8 been told that he is subject to transfer because he has an enemy on the yard in general  
9 population. He implies that he would not be able to receive care from a neurologist if housed at  
10 another facility, but provides no supporting evidence. Nor does he address the balance of equities  
11 or public interest.

12 Importantly, Plaintiff does not assert a sufficient nexus between the claim proceeding in  
13 his complaint and the requested relief. His claim is about Suwe and Wilcoxon refusing his  
14 request to urinate in violation of the Eighth Amendment. The relief he seeks now is regarding his  
15 housing assignment within the NDOC. Plaintiff attempts to assert a tangential connection  
16 between the two by asserting that he believes the injuries he complains of are a result of the  
17 action of these Defendants; however, there is no indication that Suwe or Wilcoxon have any  
18 involvement in the decision to transfer him to another facility within NDOC.

19 Finally, the Constitution "does not guarantee that the convicted prisoner will be placed in  
20 any particular prison[.]" *Meachum v. Fano*, 427 U.S. 215, 224 (1976).

21 For these reasons, Plaintiff's motions should be denied.  
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**III. RECOMMENDATION**

IT IS HEREBY RECOMMENDED that the District Judge enter an order **DENYING** Plaintiff's motions for an injunction to stop his transfer (ECF Nos. 30, 31).

The parties should be aware of the following:

1. That they may file, pursuant to 28 U.S.C. § 636(b)(1)(C), specific written objections to this Report and Recommendation within fourteen days of being served with a copy of the Report and Recommendation. These objections should be titled "Objections to Magistrate Judge's Report and Recommendation" and should be accompanied by points and authorities for consideration by the district judge.

2. That this Report and Recommendation is not an appealable order and that any notice of appeal pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure should not be filed until entry of judgment by the district court.

Dated: November 10, 2020



William G. Cobb  
United States Magistrate Judge